In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No.59 of 2006 (O&M)
Date of Decision: March 17, 2011

Jivani

---Petitioner

versus

Kishori Lal and another

---Respondent

Coram: HONBLE MR. JUSTICE GURDEV SINGH

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Present: Mr.Rahul Rathore, Advocate,
for the petitioner

Mr.S.K.Yadav, Advocate,
for respondents No. 1 and 2

Mr.J.S.Rattu, Deputy Advocate General, Haryana
for respondent No. 3

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GURDEV SINGH, J.

This revision petition has been preferred by the petitioner-complaint, Jivani, against judgment dated 18.8.2005 passed by Judicial Magistrate Ist Class, Mahendergarh, vide which he acquitted the respondents-accused, Kishori Lal and Umed Singh, of the offences under Sections 323, 325 read with Section 34 IPC.

The prosecution story, in brief, is that the complainant, PW-2, had two sons; namely Balwant and Ram Kumar. The wife of Kishori Lal-accused, who is related to her as the son of the elder brother of her husband, had contested the election of Sarpanch, in which she was opposed by her sons. On that ground there used to remain quarrel between the parties. On 17.6.1995, at about 9-00 p.m., both the accused, under the influence of alcohol, came out side her house and called her. When her son, Balwant came out, they started abusing him. She also came out and asked the accused to go back to their house. Upon which Kishori Lal-accused, gave a blow with his lathi on her right wrist, as a result of which she raised an alarm which attracted her daughter-in-law, Imratkala, PW-3, to the spot. Kishori lal-accused, gave a blow with his lathi on her left elbow. Jagmal, PW-6 and Satish Kumar @ Pappu, PW-7, came to the spot, who saved them from the accused. She and Imratkala were removed to the hospital where they were medically examined by Dr. Dharambir, PW-1, who found one injury each on their person and the same were described in the Medico Legal Reports, Ex. PW1/B and Ex. PW 1/C. He sent his ruqa Ex. PW1/A to the police station, on the receipt of which, Balu Ram ASI, came to the hospital and recorded the statement of the complainant. That statement was sent to the police station and on the basis thereof, report was recorded in the Roznamcha at Sr.No. 51. Injuries on the person of the injured were subjected to Radiological examination, which was conducted by Dr, Narbeer Singh, PW-4, who found fracture of both bones of the right fore arm of the complainant. On the basis of the Skiagram, Ex, PB, he made his report Ex. PA and on the basis thereof, injury on the person of the complainant was declared as grievous. After the receipt of that report, FIR was registered against the accused, on the basis of the report which was so recorded in the DDR. The Investigating Officer went to the place of occurrence

and after inspecting the same prepared the rough site plan with correct marginal notes. Both the accused were arrested on 25.6.1995 and after the completion of the investigation, the challan was put in before the JMIC, who found sufficient grounds for presuming that the accused committed offences punishable under Sections 323 and 325 read with Section 34 IPC. They were charged accordingly, to which they pleaded not guilty and claimed trial. To prove their guilt, prosecution examined Dharambir Singh, PW-1, Jeewani, PW-2, Imratkala, PW-3, Dr. Narbeer Singh, PW-4, Dharam Singh, PW-5, Jagmal, PW-6 and Satish Kumar @ Pappu , PW-7. After the close of the prosecution evidence, the accused were examined and their statements were recorded under Section 313 Cr.P.C. All the incriminating circumstances appearing against them in the prosecution evidence were put to them in order to enable them to explain the same. They denied all those circumstances and pleaded their innocence. They were called upon to enter on their defence but they did not produce any evidence in their defence.

I have heard learned counsel for both the sides.

It has been submitted by counsel for the complainant that the findings recorded by the trial court for acquitting the accused are perverse and illegal. The acquittal could not have been recorded on the basis of those findings as the same are not based on sound reasoning. In this case, where the hurt and grievous hurt were voluntarily caused by the accused, the non-examination of the Investigating Officer could not have been termed as material and it cannot be said that the accused were in any way prejudiced on account of the non-examination of that Investigating Officer. The prosecution was not to suffer on account of non-proving of the FIR, as the report on the bais of which that FIR was recorded, was duly proved and the complainant was examined in the Court, who fully supported the prosecution case and her

statement was corroborated by three eye witnesses. The trial court did not at all touch the statements of Jagmal, PW-6, Satish Kumar @ Pappu, PW-7 and it was wrongly observed by the trial court that both the injured witnesses made contradictory statements. No material discrepancy has crept in the testimony of those eye witnesses. Without any evidence on the record, the trial court recorded a finding that Kishori Lal, accused, was of unsound mind at the time of trial. Only suggestion to that effect was put to the prosecution witnesses and they showed their ignorance about that fact. Unsoundness of mind of that accused was to be proved by positive evidence and no such finding could have been recorded merely on account of the ignorance of the prosecution witnesses about that fact. It is a case where the finding of acquittal is to be converted into the finding of conviction.

On the other hand, it has been submitted by the counsel for the accused that it cannot be said that the findings recorded by the trial court suffer from any such perversity or illegality. The injured witnesses made such like discrepant statements that the same do not inspire any confidence. The Investigating Officer was the most material witness as he was to prove the statement made by the complainant, which ultimately formed basis of the FIR. Neither that statement was proved on the record nor the FIR itself and as such the very foundation of the case is missing. It was rightly concluded by the trial court from the statement made by the complainant that Kishori Lal, accused, was of unsound mind and that was a ground for acquittal of the accused. The accused has been materially prejudiced on account of non-examination of the Investigating Officer and conviction of the accused could have been recorded on the basis of the contradictory statements made by the injured and the other eye witnesses.

There is no universal rule of law that non-examination of the

Investigating Officer is always fatal to the prosecution. It is to be seen in the facts and circumstances of each case as to how the accused has been materially prejudiced on account of non-examination of the Investigating Officer. In the present case, it cannot be said that the accused were in any way prejudiced on account of his non-examination and in case any one has been prejudiced, it was the complainant, as the Investigating Officer was to prove on record the statement made by her before him and which formed basis of the FIR itself. The report recorded in the DDR regarding this occurrence was duly proved on the record as Ex. PC. If the accused were to confront the complainant with her statement, made before the police, they could have easily done so by referring to that report. The acquittal of the accused could not have been recorded merely on the ground that the Investigating Officer has not been examined by the prosecution, keeping in view that the accused have not been materially prejudiced on account of his non-examination.

Learned trial court did not place reliance on the statements of the injured witnesses on the ground that they made contradictory statements. After having gone through their statements, with the help of the counsel for the parties, it has been found that they made consistent statements inter se and did not contradict each other on any aspect of the case. It is pertinent to note that the trial court totally ignored the statements of two eye witnesses; namely, Jagmal, PW-6 and Satish Kumar @ Pappu, PW-7, who fully corroborated the statements of both the injured witnesses. It is strange that the trial court took into consideration the insanity of Kishori Lal-accused for acquitting him. If that accused was of unsound mind during the trial then trial court was to follow the procedure as prescribed by the Code of Criminal Procedure. That could not have been made a ground for acquittal of that accused. When that fact has come to the notice of the trial court, it should have resorted to the procedure laid

down in the Code. Moreover, there is no positive evidence on record that this accused was of unsound mind during the trial. The complainant has shown his ignorance about his insanity and that could not have been made a ground for recording a positive finding regarding the unsoundness of that accused. It appears that the trial court tried to find one excuse or the other to acquit the accused. The acquittal of the accused could not have been recorded for the reasons disclosed in the judgment of the trial court. Cogent, convincing and ocular evidence was produced by the prosecution in the form of statements of both the injured witnesses, which were further corroborated by the said two eye witnesses and the medical evidence. The finding of acquittal so recorded by the trial court cannot be sustained.

Keeping in view Section 401(3) of the Code of Criminal Procedure, the finding of acquittal cannot be converted into the finding of conviction while exercising revisional jurisdiction. But for the reasons recorded above, the acquittal of the accused is liable to be set aside and the case is to be remanded back to the trial court for passing fresh judgment by keeping in view the above said observation and by duly scrutinizing the whole of the evidence produced by the prosecution.

Accordingly, this revision is hereby accepted. The acquittal of the accused is set aside. The case is remanded back to the trial court for passing a fresh judgment, as said above.

During the trial the accused were on bail. They are directed to appear before the trial court on 18.4.2011.

(GURDEV SINGH)
JUDGE

March 17, 2011
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